

The Victim of a Police Assault Should Not be Prosecuted

District Attorney Cyrus Vance Can Only Do Justice for Cecily McMillan by Dropping the Charges Against Her

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The prosecution of occupy activist Cecily McMillan highlights the worst hallmarks of how police and prosecutors in New York responded to the occupy protests.

These include abusive targeting of people who are not protesting or who are even obeying police orders, overuse of force and mass arrests in response to assemblies, failure to prosecute abusive police but instead prosecuting victims of police abuse and police falsely testifying in ways that are inconsistent with video tape and photographs of the incident.

The question in the prosecution of Cecily McMillan is whether District Attorney Cyrus Vance will be a participant in serving justice or injustice. If this prosecution of a victim of police abuse continues, he can only be seen as unjust. The victim of police assault will be facing seven years in jail for felony police assault for trying to stop the police from grabbing her breast. The injustice is particularly stark in light of the fact that there is only one police witness who saw, actually participated, in the incident and his credibility is in serious doubt. This one-witness prosecution should be dropped.

Cecily McMillan's Abusive Arrest and Injuries from Police Assault

Let's review the incident involving Cecily McMillan. On the six month anniversary of Occupy Wall Street Cecily McMillan arrived at Zuccotti Park to meet some friends and go out to celebrate St. Patrick's Day. Instead, at the end of the night, she found herself in a hospital waking up from being unconscious having suffered seizures and badly bruised; and under arrest.

McMillan arrived in Zuccotti Park around midnight looking for friends she was supposed to meet. She was not there to protest. She arrived as the police began to violently break up the crowd. One officer told her to leave the park and she was doing so when she felt someone violently grab her right breast. She involuntarily swung her elbow around and hit the offender in the face. It turned out to be police officer Grantley Bovell. She was then aggressively arrested by a group of police officers, knocked to the ground unconscious and she began suffering seizures while she was handcuffed. It took 15 to 20 minutes before an ambulance arrived. [Photos of McMillan](#) document bruises on her right breast showing finger marks where she was grabbed, a swollen eye and other bruises.

The sole witness who saw the incident was the police officer who grabbed her breast. Cecily's attorney, Marty Stolar, has filed a motion with the court for Officer Bovell's

personnel file. This is a rare motion to file because it cannot be used for a fishing expedition by the defense. But, in this case the defense has good reason for the motion. Stolar already knows of some problems regarding Bovell that undermine his credibility. The District Attorney has provided Stolar with documents that show Bovell was part of the infamous [2011 Bronx ticket-fixing scandal](#). In a recent interview Stolar told me that Bovell was internally disciplined for his corrupt actions in that case.

In addition, Bovell is a defendant in [a lawsuit](#) for alleged police abuse of a young African American who was riding a dirt bike. The lawsuit alleges that Bovell was one of the officers involved in using two police cars to push him off the road on March 21, 2010 resulting in the young man being knocked unconscious with a broken nose, two teeth knocked out and a large cut on his forehead. The lawsuit is still pending.

Abusive Police and Prosecutorial Actions Against Protesters Are the Norm; Vance's Lack of Prosecution Makes it Worse

The abusive actions of the NYPD in their response to occupy have been well documented. What has been less well documented is the complicity of the New York District Attorney's Office. Under the leadership of Cy Vance, police have not been prosecuted, obviously false testimony has been put on the stand by prosecutors and victims of police abuse have had to file lawsuits to protect their rights. Prosecutor Vance's actions have done nothing to curtail police violence against people exercising their constitutional rights. In fact, his failure to act makes his office part of the problem when it should be part of the solution.

Legal clinics at NYU and Fordham issued a report on police abuse that included input by researchers from legal clinics at Harvard, Stanford, Loyola, Charlotte and Rutgers law schools. After eight months of research they issued the report, "[Suppressing Protest: Human Rights Violations in Response to Occupy Wall Street](#)." They found that the NYPD protesters' rights were constantly violated and described scores of specific examples of police abuse, many of which were documented by video tape and by immediate interviews of people present at the event. The report documented numerous practices that were present in the McMillan incident including:

- Aggressive, unnecessary and excessive police force against peaceful protesters, bystanders, legal observers, and journalists,
- Obstruction of press freedoms and independent legal monitoring,
- Violent late-night raids on peaceful encampments,
- Unjustified closure of public space, dispersal of peaceful assemblies, and kettling (corralling and trapping) of protesters,
- Arbitrary and selective rule enforcement and baseless arrests,
- Failures to ensure accountability for those allegedly responsible for abuses

The report recommended a series of steps to promote accountability of police actions. Among those were investigation and prosecution of police officers responsible for crimes and infractions. Yet, in response to these scores of documented cases how many NYPD officers has he prosecuted involved in police abuse? A search of the Internet found very little

evidence of any accountability and no prosecutions.

One of the infamous cases involved Inspector Tony Bologna who pepper-sprayed women who were already under arrest and behind an orange mesh barrier. Bologna is shown on multiple videos walking over to the women and pepper spraying them. There is nothing in any of the camera angles that shows the woman doing anything justifying of this abuse. He was found to have violated internal police department rules, yet District Attorney [Cy Vance's office announced in April 2013 that they would not prosecute](#) him.

On the same day Vance's office also announced that Deputy Inspector Johnny Cardona, who videos shot from several angles shows sucker-punching a man in the face without provocation and in full view of the media on October 14, 2011. Cardona was also involved in [an incident one month earlier](#), in which he was caught on video grabbing a female protester by the neck and dragging her to the ground, with no evidence of provocation shown. Vance refused to prosecute this repeat offender.

The failure to hold New York City police accountable is endemic. Not only has prosecutor Vance failed to prosecute but [the police department has declined to act](#) on a growing number of cases substantiated by the Civilian Complaint Review Board that have recommended prosecuting police officers. And where the NYPD did pursue discipline against officers it often issued the least serious punishment against the recommendations of the Review Board.

Prosecutors Seem to be Facilitating Perjury by Police

On top of the failure to prosecute violent police, the District Attorney's office puts forward testimony from police that is inconsistent with videotape and photographic evidence. If the case against McMillan goes forward, Officer Bovell, who already has credibility problems, will be testifying in ways inconsistent with videos and photos of the event.

In a prosecution of an occupy activist for the same charge Cecily McMillan is facing, police abuse, [the jury acquitted Michael Premo](#) after the police officer's testimony was shown to be completely inconsistent with videotape of the incident. Prosecutors and police claimed that Premo tackled a police officer and in doing so broke a bone. But, videotape showed a very different story, officers actually charged into Premo unprovoked. Thankfully, the jury acquitted Premo of all charges including felony assault. The video from Democracy Now also showed that an NYPD officer was also filming the arrest, but prosecutors told Premo's attorney that no such footage existed.

Did Vance's office do anything about this perjury or the police illegally hiding exculpatory evidence? How could prosecutors even go forward with a prosecution when videotape evidence plainly showed the police story was false?

In fact, going back to [the first trial of an OWS protester](#), a videotape similarly shows perjury by police. The case involved Alexander Arbuckle who was at the protest doing a photojournalism project. His thesis was that the NYPD was being unfairly accused of violence and abuse. He wanted to document how professional the police were but instead found himself arrested even though he was doing nothing illegal.

Officer Elisheba Vera testified that "The protesters, including Arbuckle, were in the street blocking traffic." She claimed they had to make arrests in order for traffic to move.

Fortunately for Arbuckle there were photographs and video of what actually occurred and it was the opposite of Officer Vera's testimony. According to a live-streamer's video, protesters were on the sidewalk, obeying police orders.

Again, Vance failed to act. The District Attorney's office did not prosecute Vera for lying under oath. Perhaps if they had done so in this first occupy prosecution, police officers would have gotten the message – perjury will not be tolerated in New York courts. But, the failure to prosecute sent the opposite message – “testilying,” as perjury by police is called, will be allowed; in fact prosecutors will help police get away with it.

Even with this free-for-all of police deceit in the courts, [the 2,600 occupy arrests in New York were almost all dismissed](#) or reduced to charges where there would be no arrest record. In many cases the police who made the arrests did not even bother to show up. Again, what did Vance do about this abuse of process? Silence from a prosecutor in the face of mass arrests only encourages police to misbehave when people exercise their rights.

Dismissing the Charges is the Only Path to Justice in the McMillan Case

All of these issues are raised in the Cecily McMillan case. As a result, District Attorney Vance should stand on the side of justice and dismiss the charges before the case goes to trial.

When I interviewed Cecily's attorney, I asked what evidence the police have that justifies her being arrested? Only one police officer witnessed the incident and that was Officer Bovell who grabbed Cecily's breast from behind. Marty Stolar points out that if there were any other witnesses to the event, the prosecutors were required to tell him about it as part of the discovery in preparation for trial. Bovell is the only witness to the offense that he has been told about.

This one-witness case gives District Attorney Vance all he needs to drop the charges against McMillan. Officer Bovell has a serious credibility problem because of his involvement in the ticket-fixing scandal for which he has been reprimanded; and he also has a past record of likely abuse for which he is being sued.

On top of that, there are photographs and videos that support Cecily McMillan's story. [Photographs of McMillan](#) taken at the hospital show bruises to her breast and other parts of her body. [Videos](#) show police attacking her and her being knocked unconscious and convulsing while in handcuffs. There are no videos, photographs or witnesses that support Bovell's story.

Certainly a woman whose breast is violently grabbed from behind in a crowd would instinctively react as Cecily did. This is not a case of criminal intent to assault a police officer, but rather is a case of a woman involuntarily reacting to her breast being grabbed so aggressively that she was severely bruised.

When [District Attorney Vance spoke to the New York City Bar Association](#), he quoted key language from Berger v. United States on the role of a prosecutor that has become the ethical standard throughout the nation. He said our “interest . . . in a criminal prosecution is not that [we] win a case, but that justice shall be done.” His speech noted the challenge of prosecuting a case where a witness's testimony is compromised and explained that was why he did not prosecute Dominique Strauss-Kahn in the notorious alleged sexual assault case involving a hotel maid. He summarized his approach to making sure the innocent were

not prosecuted by saying:

“I believe that prosecutors should be among the most skeptical actors in the criminal justice system about what that concept means and how our decision-making process gets us there. Otherwise, we risk the phrase ‘doing justice’ devolving into an empty shibboleth.”

District Attorney Vance’s words will be an “empty shibboleth” if he does not reconsider the prosecution of Cecily McMillan based on the testimony of a police officer who sexually assaulted her, who lacks credibility and whose testimony is inconsistent with other evidence.

Mr. Vance has the opportunity to seek justice for Cecily McMillan but the only way to do so is to dismiss the charges against her.

What you can do:

Visit [Drop The Charges Against Cecily McMillan](#) and send a tweet, @ManhattanDA, or call the New York District Attorney, (212) 335-9000, urging him to not prosecute Cecily McMillan. Let them know the public is watching this case closely.

Also, visit the support page for Cecily McMillan, [Justice for Cecily](#), to find out what else you can do.

And, if you can be in court in New York City on March 3 please do so. The case will be heard at 9:30 AM at 100 Centre Street, New York, NY, United States Room 1333 part 31, arrive early.

This article was first published [on AlterNet](#).

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